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January 9, 2006

**DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS**

**Hearing Officer's Decision**

Case Name: Personnel Security Hearing

Date of Filing: August 4, 2005

Case Number: TSO-0277

This Decision concerns the eligibility of XXX XXXXXX XXXXXXXXXX XXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1/</sup> A Department of Energy (DOE) Operations Office suspended the individual's access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be restored. As set forth in this Decision, I have determined that the individual's security clearance should not be restored at this time.

**I. Background**

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

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<sup>1/</sup> An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

The individual was granted a DOE security clearance after gaining employment with a DOE contractor. However, the local DOE security office (DOE Security) initiated formal administrative review proceedings by informing the individual that his access authorization was being suspended pending the resolution of certain derogatory information that created substantial doubt regarding his continued eligibility. This derogatory information is described in a Notification Letter issued to the individual on June 30, 2005, and falls within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8(j). More specifically, the Notification Letter alleges that the individual has “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse,” 10 C.F.R. § 710.8(j) (Criterion J).

In reference to Criterion J, the Notification Letter states that the individual has been diagnosed by a DOE consultant-psychiatrist (DOE Psychiatrist) as suffering from Alcohol Abuse. The Notification letter further describes several alcohol-related incidents involving the individual: (1) in November 2003, the individual was arrested for Battery on a Household Member, on an occasion when the individual had admittedly consumed alcohol; 2) in 1995, the individual was involved in a domestic violence incident with his wife when both had been drinking; 3) in 1989, the individual was arrested on a charge of Driving While Intoxicated (DWI); and 4) in 1987, the individual was arrested for DWI. The Notification Letter also indicates that the individual was arrested for Drinking in Public and Open Container while in high school.

In a letter received by the DOE Office of Hearings and Appeals (OHA) on August 4, 2005, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On August 10, 2005, I was appointed as Hearing Officer. After conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, a hearing date was established. At the hearing, the DOE Security called the DOE Psychiatrist as its sole witness. The individual testified on his own behalf, and also called two co-workers and a close friend as witnesses. The transcript taken at the hearing will be hereinafter cited as "Tr." Documents that were submitted during this proceeding by DOE Security and the individual constitute exhibits to the hearing transcript and will be cited respectively as “DOE Exh.” and “Ind. Exh.”.

### Summary of Findings

The following factual summary is essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual initially sought a DOE security clearance in late 2002, after gaining

employment with a DOE contractor. During the background investigation of the individual, several matters of concern arose regarding the individual's finances, his past employment and his use of alcohol. However, these matters were resolved by DOE Security during two Personnel Security Interviews (PSI) conducted on July 18, 2003 (PSI I) and August 19, 2003 (PSI II). The individual was therefore granted a security clearance.

However, on November 21, 2003, the individual was arrested on a charge of Battery on a Household Member, pursuant to an incident when the individual had consumed alcohol. This arrest resurrected the concerns of DOE Security regarding the individual's use of alcohol. DOE Security was unable to resolve these concerns during a third PSI conducted on September 8, 2004 (PSI III). The individual was therefore referred to the DOE Psychiatrist who reviewed the individual's security file and conducted a psychiatric examination of the individual on February 8, 2005. The individual's history of alcohol use, as described during the three PSI's and psychiatric interview, is summarized below.

The individual admittedly drank heavily while in high school and his ensuing adolescent years. During PSI I, the individual stated that at age 15 he was getting intoxicated twice a month. The individual stated during PSI III that during his later high school years, he was drinking a six-pack to a twelve-pack of beer every other day. During this time (1986 - 1987), the individual was arrested for Public Drinking and Open Container. On May 23, 1987, the individual was arrested for DWI following an incident in which he drove his vehicle into a parked car and was taken to the hospital. On this occasion, the individual was also charged with Minor Allowing Self to be Served Alcohol and Reckless Driving. While still on probation from this DWI arrest, the individual was again arrested for DWI on December 22, 1989.

The individual reportedly reduced his consumption of alcohol after the death of his mother in 1991. At this time, the individual estimates that he was drinking six to twelve beers per week, and was becoming intoxicated only a few times a month. The individual again reduced his drinking in 1994 when he began a trade apprenticeship. After that time, the individual reportedly was drinking about one six pack per week. In 1995, the individual was involved in a domestic violence incident with his wife. The individual's wife hit him during an altercation and she was arrested and jailed by the police. While both the individual and his wife had been drinking prior to the incident, the individual states that his wife was intoxicated but he had only begun drinking. At the time PSI I and PSI II were conducted in July and August 2003, the individual reported that he was drinking six to ten beers on the weekend, which did not affect his behavior, and that he was getting intoxicated once a month.

On November 21, 2003, the individual was arrested for Battery on a Household Member, following a fight with his brother. On this occasion, the individual reports

that he arrived home to a family gathering where his brother had already become intoxicated. According to the individual, he had just begun drinking and was on his second or third beer when his brother made an indecent comment about the individual's daughter by a previous marriage, who was temporarily residing with the individual. When the individual's brother refused to take back his comment, the individual punched his brother and a fight ensued. The individual's wife called the police and the individual was arrested. The police report notes that upon arriving at the scene, they found as many as 24 empty beer bottles and cans on the counter and in the trash can. During the subsequent PSI III, conducted in September 2004, the individual stated that he generally drank about a six pack on some weekends, and that he was becoming intoxicated once every two weeks.

The individual was still drinking at the time he saw the DOE Psychiatrist in February 2005. However, at this time, the individual reported that he was having a couple of beers a few times a week, mostly on weekends. As part of his evaluation, the DOE Psychiatrist administered a psychological test as well as blood and urine laboratory tests. In his report issued on February 14, 2005, the DOE Psychiatrist diagnosed the individual with Alcohol Abuse, based upon criteria set forth in the *Diagnostic and Statistical Manual of Mental Disorders, Text Revision (DSM-IV TR)*. The DOE Psychiatrist attached substantial significance to the individual's laboratory test results showing that the individual had an abnormally high Gamma GT liver enzyme level (44 on a normal scale of 5 - 40), which is indicative of excessive alcohol use. The DOE Psychiatrist further opines in his report that in order to establish adequate evidence of rehabilitation or reformation, the individual must attend an outpatient program of moderate intensity, such as Alcoholics Anonymous (AA), and maintain sobriety for a minimum of one year.

## II. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. *See Personnel Security Hearing*, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances

indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual's access authorization should not be restored since I am unable to conclude that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d). The specific findings that I make in support of this determination are discussed below.

#### Criterion J, Use of Alcohol

##### (1) Derogatory Information

The individual has admittedly had problems with excessive alcohol consumption in the past. The individual concedes that he drank heavily in the late 1980's and early 90's when he was arrested twice for DWI within a two-year period. Tr. at 41. During his testimony, the individual acknowledged that his drinking was a factor in the break up of his first two marriages. Tr. at 48.<sup>2/</sup> According to the individual, his drinking began to subside in 1991 after his mother died, and decreased even more in 1994 when he began a trade apprenticeship. Tr. at 41-42. Since that time, however, the individual has had two domestic violence incidents, in 1995 and in November 2003, when alcohol was involved. During his final PSI in September 2004, the individual stated that he was drinking once or twice a week but getting intoxicated once every two weeks. DOE Exh. 8 (PSI III) at 37. The individual admitted at the hearing that "I didn't think I had a problem but the more and more I look at it, that maybe I do have an alcohol problem." Tr. at 39.

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<sup>2/</sup> The individual has been married three times. The individual was first married in 1988 at age 18. This marriage ended when his wife left the marriage in 1989. The individual's second marriage, in 1993, similarly ended in divorce in less than two years. The individual married his current wife in 1995. See DOE Exh. 6 at 6.

In his report, the DOE Psychiatrist diagnosed the individual with Alcohol Abuse based upon criteria set forth in the *DSM-IV TR*. See DOE Exh. 6 (Report) at 7-8. The *DSM-IV TR* provides that a diagnosis of Alcohol Abuse is supported when the individual manifests one of four behaviors within a twelve-month period, including generally: 1) recurrent failure to fulfill major role obligations at work, school or home, 2) recurrent use in situations in which it is physically hazardous, 3) recurrent substance-related legal problems, and 4) continued use despite social or interpersonal problems. *Id.* The DOE Psychiatrist acknowledged at the hearing that the individual did not specifically fit within these criteria since it was more than twelve months between the individual's last alcohol-related incident in November 2003, and his examination of the individual in February 2005. Tr. at 91. The DOE Psychiatrist asserted, however, that the *DSM-IV TR* criteria are not "set in stone" but guidelines for making a psychiatric diagnosis. Tr. at 91-92.

The DOE Psychiatrist explained that, in the case of the individual, he determined that a diagnosis of Alcohol Abuse was appropriate based upon the individual's: 1) past history of excessive alcohol use, with definite signs of alcohol dependence as a young adult; 2) several alcohol-related arrests ending with his arrest in November 2003 for Battery on a Household Member<sup>3/</sup>; 3) increased tolerance and admission during PSI III that he was getting intoxicated every two weeks; and 4) the individual's elevated GGT levels at the time of his evaluation. Tr. at 66-71. In the final regard, the DOE Psychiatrist opined that while the individual's GGT liver enzymes were only mildly elevated (44 on a normal scale of 5 - 40) at the time of his psychiatric examination, he believes that excessive alcohol use by the individual was the principal cause of this elevation. Tr. at 67-68, 114-15.<sup>4/</sup>

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<sup>3/</sup> The individual maintains that he had drank only a few beers and was not intoxicated at the time of the incident, but that his brother was intoxicated and instigated the fight. See Tr. at 43-44. The DOE Psychiatrist suspects that the individual may have been drinking more than he admits at the time of the incident. Tr. at 73-74. The DOE Psychiatrist further emphasized, however, that during his psychiatric interview, he asked the individual if he would have been able to handle the situation without violence if he himself had not been drinking, to which the individual responded "probably, a good possibility." DOE Exh. 6 at 4; Tr. at 71.

<sup>4/</sup> In his report and during his testimony, the DOE Psychiatrist acknowledged that the individual's mildly elevated GGT level may have in part been caused by the individual's obesity and medication (ibuprofen) the individual was taking at the time. DOE Exh. 6 at 7; Tr. at 67-68, 108-09. At the hearing, the DOE Psychiatrist therefore encouraged the individual to submit to another laboratory test of his GGT levels. Tr. at 117. The individual complied with the DOE Psychiatrist's suggestion and submitted a new laboratory report subsequent to the hearing. This laboratory test, administered in November 2005, shows that after several months of sobriety, the individual's GGT liver enzymes are now well within

On the basis of the record, I find that DOE Security properly invoked Criterion J in suspending the individual's security clearance. The DOE Psychiatrist's diagnosis of Alcohol Abuse is corroborated by the individual's admitted family and legal difficulties stemming from his use of alcohol. In other DOE security clearance proceedings, Hearing Officers have consistently found that a diagnosis related to excessive alcohol use raises important security concerns. *See, e.g., Personnel Security Hearing*, Case No. TSO-0168, 29 DOE ¶ 82,807 (2005); *Personnel Security Hearing*, Case No. VSO-0079, 25 DOE ¶ 82,803 (1996) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0014, *aff'd*, *Personnel Security Review*, 25 DOE ¶ 83,002 (affirmed by OSA, 1995). In these cases, it was recognized that the excessive use of alcohol might impair an individual's judgment and reliability, and his ability to control impulses. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. *Id.* Accordingly, I will turn to whether the individual has presented sufficient evidence of rehabilitation or reformation to mitigate the security concerns of DOE Security.

## (2) Mitigating Evidence

The individual testified that his evaluation by the DOE Psychiatrist in February 2005 caused him to recognize that he does have a problem with alcohol, and he made the decision to stop drinking altogether at the beginning of Lent, one week following their meeting. Tr. at 38, 49-50, 59-60. The individual's friend and wife corroborated that the individual has been abstinent since February 2005, giving the individual eight months of sobriety at the time of the hearing. Tr. at 34-35; Ind. Exh. 2. In further corroboration of his claim of sobriety, the individual submitted the results of a laboratory test taken subsequent to the hearing, in November 2005, showing that the individual's GGT liver enzymes are now within the normal range (32 on a scale of 14 - 73). *See* Ind. Exh. 1. The individual stated that he does not intend to resume drinking and plans to begin attending AA meetings. Tr. at 38, 49. The individual appeared to be sincere in testifying that, "I'm willing to do anything to fix the problem." Tr. at 124.

The DOE Psychiatrist accepted the individual's assertion that he has been sober since February 2005. Tr. at 75. Notwithstanding, the DOE Psychiatrist expressed his opinion that the individual had not achieved adequate reformation or rehabilitation, noting that the individual had not yet fulfilled the one year of sobriety and attendance at an alcohol treatment program recommended in his report. Tr. at 77-78. According

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the range of normal, 32 on a scale of 14 - 73. *See* Ind. Exh. 1. According to the DOE Psychiatrist, this would tend to show that the individual's elevated GGT liver enzymes in February 2005 were in fact due to excessive use of alcohol. Tr. at 116-17.

to the DOE Psychiatrist, the one-year abstinence requirement is critical since studies show that persons with alcohol abuse or alcohol dependence have a markedly greater chance of maintaining their sobriety if they are able to successfully complete the full one-year cycle of “common markers that often threaten people’s sobriety – you know, birthday, New Year’s Eve, Super Bowl, all the annual celebrations.” Tr. at 77.

The DOE Psychiatrist further expressed concern that the individual had not attended AA or other treatment program prior to the hearing, noting that “the odds [maintaining sobriety] go way up when you get treatment than when you try to do it on your own.” Tr. at 78. Adding to this concern was the DOE Psychiatrist’s observation that the individual does not have good family or other support systems in place to help him maintain his sobriety. Tr. at 86. Although the DOE Psychiatrist acknowledged that the individual has made “a very good start,” he gave the individual only a “50/50” prognosis of maintaining his sobriety, based upon eight months of sobriety with no treatment at the time of the hearing. Tr. at 85. Consequently, I find that the individual has not yet overcome the security concerns associated with his past use of alcohol and diagnosis of Alcohol Abuse. *See Personnel Security Hearing*, Case No. VSO-0359, 28 DOE ¶ 82,768 (2000), *aff’d*, *Personnel Security Review*, 28 DOE ¶ 83,016 (2001); *Personnel Security Hearing*, Case No. TSO-0011, 28 DOE ¶ 82,912 (2003); *cf. Personnel Security Hearing*, Case No. TSO-0001, 28 DOE ¶ 82,911 (2003).

### III. Conclusion

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. § 710.8 (j) in suspending the individual's access authorization. For the reasons I have described above, I find that the individual has failed to mitigate the security concerns associated with his past use of alcohol. I am therefore unable to find that restoring the individual’s access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual’s access authorization should not be restored at this time. The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Fred L. Brown  
Hearing Officer  
Office of Hearings and Appeals

Date: January 9, 2006